

jurisdiction of this matter.

Jeffrey Greene ("defendant" or "Jeffrey Greene") do not contest that this Court possesses Defendants EverGreene Painting Studios, Inc. ("defendant" or "EverGreene") and ("City Law").

"Executive Law"), and the Administrative Code of the City of New York, §§ 8-101 to 8-131 (the plaintiffs claims under the New York State Human Rights Law, Executive Law §§ 290 to 301 (the U.S.C. § 1331. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over claims under the Family and Medical Leave Act, 29 U.S.C. §§ 2601 to 2654 (the "FMLA"), and 28 U.S.C. § 1331. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over This Court has jurisdiction over plaintiff Gloria Grillo's ("plaintiff" or "Grillo")

I: JURISDICTION

the Pretorial Order herein.

the individual rules of Judge Castel, adopt the following statements, directions and agreements as

The parties, having conferred among themselves pursuant to Fed. R. C. P. 16 and

----- X

Defendants.

EVERGREENE PAINTING STUDIOS,
INC., & JEFFREY GREENE,

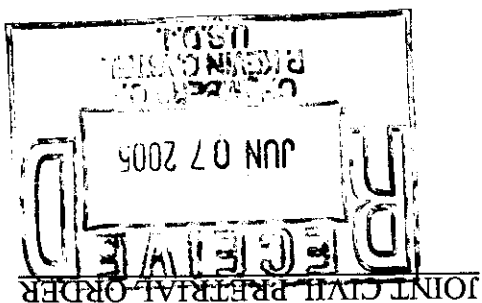
- against -

Plaintiff,

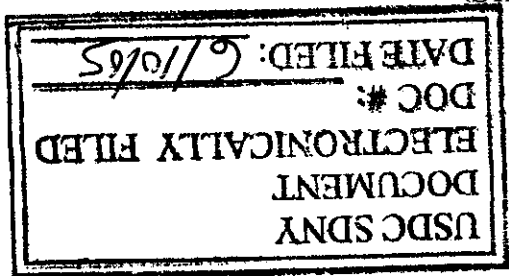
GLORIA J. GRILLO,

----- X

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



04 Civ. 06968 (PKC)



II: SUMMARY OF CLAIMS AND DEFENSES

Plaintiff alleges that defendant EverGreene unlawfully denied her benefits to which she was entitled under the FMLA, 29 U.S.C. § 2615(a)(1), by failing to return her to the same or an equivalent position upon her attempt to return from leave.

Plaintiff also alleges that defendants violated the Executive Law and the City Law by firing her based on her disability.

Defendants allege that their treatment of plaintiff was not in any way influenced by: (1) plaintiff's FMLA leave or (2) plaintiff's disability.

Defendants allege that they did not discriminate or retaliate against plaintiff in violation of the FMLA, the Executive Law, or the City Law. Rather, defendants assert that plaintiff was not reinstated due to a combination of the following factors: (a) downward business spiral; (b) plaintiff's prior poor performance; and (c) a reorganization of defendant's office, eliminating plaintiff's position.

III: JURY/NON-JURY

Plaintiff has demanded a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure. The parties estimate that a trial will last approximately three to five days.

IV: TRIAL BEFORE MAGISTRATE JUDGE

The parties have not consented to trial of this matter before a magistrate judge.

V: STIPULATED FACTS

1. Plaintiff Gloria Grillo was employed by EverGreene from February 2000 until the involuntary termination of her employment on April 27, 2004.
2. Defendant EverGreene is in a decorative arts company that provides restoration, murals, conservation, and decorative painting for public and private clients.

3. EverGreene is an "employer" as defined by the FMLA, the Executive Law, and the City Law. 29 U.S.C. § 2611(4)(A); Executive Law § 292(5); City Law § 8-102(5).

4. Defendant EverGreene's principal place of business is in New York.

5. Defendant Jeffrey Greene is the president and owner of EverGreene.

6. Grillo joined EverGreene as an assistant project manager in the Restoration Department.

7. Grillo was involved in a automobile accident in January 2004.

8. While Grillo was recovering from the accident, doctors discovered that she had an ovarian tumor that required a full hysterectomy.

9. Ovarian cancer is a "serious health condition" under the FMLA. 29 U.S.C. § 2611(11). It is also a "disability" under Executive Law § 292(21) and City Law § 8-102(16).

10. Grillo requested and was granted leave for her hysterectomy.

11. Grillo took approximately six weeks of leave from EverGreene for the surgery and her recovery.

12. Grillo called EverGreene on April 12, 2004, and spoke to Desiree Greene ("Ms. Greene"), EverGreene's General Manager.

13. Grillo told Ms. Greene that she would be able to return to work full-time on May 3, and asked if there was any work that she could do from home during the last two weeks of April.

14. Ms. Greene said that she would speak to Jeffrey Greene and get back to Grillo; Grillo did not, in fact, hear back from Ms. Greene.

1 Plaintiff reserves the right to call additional rebuttal witnesses.

1. Gloria Grillo
2. Jeffrey Greene (by deposition)
3. Desiree Greene (by deposition)
4. Joseph Braby
5. Amy Gill
6. Zack Bunkers
7. Vanessa Furnari
8. Joann Russo
9. Bendeth Vanderloan
10. Dr. Austin Chen, M.D.
11. Anthony Grillo
12. Danielle Grillo

VI: PLAINTIFF'S WITNESS LIST¹

10.

support another staff member." The full contents of this e-mail are set forth in Plaintiff's Exhibit

and Ms. Greene stating, among other things, that there was "not enough work in the office to

16. On April 27, 2004, Grillo received an e-mail response from Jeffrey Greene

this e-mail are set forth in Plaintiff's Exhibit 9.

things, that she would be ready to return to work on Monday, May 3, 2004. The full contents of

15. Grillo e-mailed EverGreene on April 26, 2004, stating, among other

VII: DEFENDANTS' WITNESS LIST

- A. Jeffrey Greene
B. Desiree Greene
C. Walter Zyilinski
D. Robin Roi
E. Irene Gemelos
F. William Menschling
G. Sherry Thomas
H. Christina Grinnell
I. Kristin Solary
J. David Cloyd
K. Kim Lovejoy
L. Luis Angarita
M. Richard Tobin
N. Denise Vasaya
O. Bonnie VanDerWeld
P. M.K. Adams
Q. *TERRY VanDerWeld*

PKC

VIII: PLAINTIFF'S DEPOSITION DESIGNATIONS²

Deposition	Page:line #'s	Objections/Counter Designations
Deposition of Jeffrey Greene	110:10-11	For the purpose of all of plaintiff's designations, defendants' objections were made on the record during the depositions.
	119:19-24	
	119:25, 120:2-22	
	121:2-11, 17-20	
	145:6-13	
	154:7-161:16	
	167:12-169:19	
	176:3-176:19	
	188:9-189:19	
	203:4-206:6	
	228:14-25, 229:1-14	
	229:20-25	
	231:5-19	

² Either party may use excerpts from the deposition of any witness who is unavailable pursuant to Fed. R. Evid. 804 (b)(1).

Deposition	Page:line #'s	Objections/Counter Designations
	233:23-25	
	234:2-25	
	235:2-28	
	236:4-25; 237:2-7	
	239:2-25; 240:2-8	
	241:14-242:7	
	259:17-260:5	
	264:10-25; 265:2-5	
	268:3-25; 269:2-25; 270:2-4	
	271:21-272:2	
Deposition of Desiree Greene	25:2-18	
	25:25; 26:2; 26:8-22	
	27:6-9	
	28:5-13	
	28:24-25; 29:1-22	
	55:15-21	
	66:3-12	
	87:14-25	
	88:12-25	
	89:1-20	
	90:1-13	
	90:25	
	91:1-25	
	92:1-25	
	93:1-3	
	100:22-25	
	101:11-14	
	106:23-25	
	107:22-25	
	108:2	
	110:11-21	
	112:2-25	
	113:1-25	
	114:1-9	

IX: DEFENDANTS' DEPOSITION DESIGNATIONS³

Deposition	Page:line #'s	Objections/Counter Designations

X: PLAINTIFFS EXHIBITS WITH OBJECTIONS

No exhibit not listed below may be used at trial except (a) for cross-examination purposes; or (b) for good cause if its exclusion from the pretrial order is shown.⁴ Any objections not set forth shall be considered waived absent good cause shown.

EXHIBIT	DESCRIPTION	OBJECTIONS	NO OBJECTION TO AUTHENTICITY * / NO OBJECTIONS**
1.	Advertisements and notes from plaintiff's job search, 000001-4; 17; 21; 25; 27; 28; 30; 34; 36-37; 41; 43-47		**
2.	Cover letters and resumes from plaintiff's job search, 000005-18; 22; 26; 29; 31-33; 35; 38; 38-40; 42; 50-68; 70-71; 79-90; 92-105		**
3.	Construction Administrator Brochure, 000073-74		**
4.	Email from Sharon Humphreys to Gloria Grillo dated October 12, 2004, 000019-20		**

³ Either party may use excerpts from the deposition of any witness who is unavailable pursuant to Fed. R. Evid. 804 (b)(1).

⁴ Each party reserves the right to use exhibits on the other party's exhibit list.

EXHIBIT	DESCRIPTION	OBJECTIONS	NO OBJECTION TO AUTHENTICITY * / NO OBJECTIONS**
5.	Letter from Gloria Grillo to Joseph Braby dated December 16, 2004, 000069		**
6.	Documents relating to plaintiff's tea business, 000106-119		**
7.	EverGreene Painting Studios Vacation Request Form, 000048-49		**
8.	Email from DreamofLulu@aol.com to Gloria Grillo dated June 6, 2001, 000091		**
9.	Email from Kim Lovejoy to Gloria Grillo dated May 7, 2004, forwarding email, 000075		**
10.	Email from Jeff Greene to Gloria Grillo dated April 27, 2004, 000076		**
11.	Email from Irene Gemelos to Gloria Grillo dated May 3, 2005, 000077		**
12.	Email from Irene Gemelos to Gloria Grillo dated May 5, 2005, 000078		**
13.	Email from Christina Grinnell to Gloria Grillo dated May 21, 2003, D000001-2		**
14.	Email from Christina Grinnell to Gloria Grillo dated December 27, 2002, D000004		**
15.	Email from Christina Grinnell to Gloria Grillo dated January 2, 2003, D000006		**
16.	Email from Desiree Greene to Gloria Grillo dated January 19, 2004, D000013		**

EXHIBIT	DESCRIPTION	OBJECTIONS	NO OBJECTION TO AUTHENTICITY * / NO OBJECTIONS**
17.	Email from Jeff Greene to Gloria Grillo dated April 27, 2004, D000014		**
18.	New Employee Form, Gloria Grillo, D000015		**
19.	EverGreene Painting Studios Employee Handbook, Effective 1/2001, D000024-45		**
20.	EverGreene Painting Studios Employee Benefit Outline, 2004-2005, D000046		**
21.	Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return -- Attachment, EverGreene Painting Studios, April 1 - June 20, 2004, D000063-68		**
22.	EverGreene Painting Studios, Inc., Financial Statements, September 30, 2003, D000069-78		**
23.	Office Personnel List, D000079		**
24.	New Hire Form, Bonnie Kramer, D000113		**
25.	New York Times Advertising Invoice, dated May 24, 2004, D000154		**
26.	EverGreene Painting Studios, Inc., Regular Employee Benefits - Time Off, D000188		**
27.	Civil Docket Sheet, U.S. District Court, District of Columbia, Civil Docket for Case #: 1:03-cv-02473-JDB		**

EXHIBIT	DESCRIPTION	OBJECTIONS	NO OBJECTION TO AUTHENTICITY * / NO OBJECTIONS**
28.	Defendants' Answer to the Amended Complaint, dated December 27, 2004		**
29.	Defendant's Mandatory Disclosure, dated October 19, 2004		**
30.	Defendant's Supplemental Mandatory Disclosure, dated October 22, 2004		**
31.	Defendant's Answers to Plaintiff's First Set of Interrogatories and First Set of Document Requests, dated December 27, 2004		**
32.	Defendant's Supplemental Answers to Plaintiff's First Set of Interrogatories and First Set of Document Requests, dated January 3, 2005		**
33.	Letter from Rich Howard to Kevin Mintzer, dated March 8, 2005, portions regarding EverGreene's email system and plaintiff's bonus history at EverGreene		**
34.	Damages Chart		**

XI: DEFENDANTS' EXHIBITS WITH OBJECTIONS

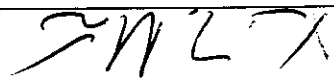
No exhibit not listed below may be used at trial except (a) for cross-examination purposes; or (b) for good cause if its exclusion from the pretrial order is shown.⁵ Any objections not set forth shall be considered waived absent good cause shown.

EXHIBIT	DESCRIPTION	OBJECTIONS	NO OBJECTION TO AUTHENTICITY* / NO OBJECTIONS**
A.	Email to ggrillo from Dream of Lulu dated 7/29/03, D000009	Plaintiff objects on the grounds of hearsay and relevance.	
B.	Email to jgreene from Dream of Lulu dated 12/27/02 D000003	Plaintiff objects on the grounds of hearsay.	
C.	Email from Dream of Lulu to ggrillo dated 12/27/03, D000004	Plaintiff objects on the grounds of hearsay and relevance.	
D.	Email from ggrillo to Christina Grimmell dated 12/31/03, D000005		**
E.	Email from Christina Grimmell to Gloria Grillo dated 1/02/03, D000007	Plaintiff objects on the grounds of hearsay and relevance.	
F.	Complaint in IUPAT v. EverGreene Painting Studios, Inc.	Plaintiff objects on the grounds of hearsay and relevance.	
G.	EverGreene sales records from 1/1/02 – 4/27/04	Plaintiff objects to the use of EverGreene's sales records at trial; in spite of numerous requests for EverGreene's financial information, these documents have never been produced to plaintiff. Plaintiff reserves the right to make further objections to EverGreene's sales records once they have been produced.	

⁵ Defendants reserve the right to use exhibits on plaintiff's exhibit list.

VLADECK, WALDMAN, ELIAS
& ENGELHARD, P.C.

By:



Kevin T. Mintzer (KM 4741)

Michele Host (MH 2557)

Attorneys for Plaintiff

1501 Broadway, Suite 800

New York, New York 10036

Telephone: (212) 403-7300

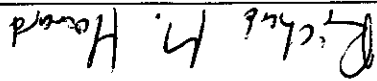
Facsimile: (212) 221-3172

E-mail: kmintzer@vladeck.com

Dated: New York, New York

June 6, 2005

By:



Richard M. Howard (RMH-2932)

Kaufman Schneider & Bianco, LLP

Attorneys for Defendants

390 North Broadway

Jericho, NY 11753

Telephone: (516) 681-1100

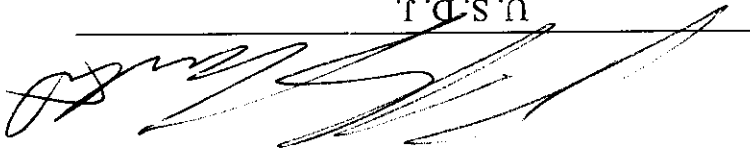
Facsimile: (516) 681-1101

E-mail: rmh@managementalattorney.com

KAUFMAN, SCHNEIDER & BIANCO, LLP

See addendum

U.S.D.J.



6-10-05